

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES LYNN HINES,

Petitioner,

v.

JANET NAPOLITANO, Warden,

Respondent.

Civil No. 07cv1816 WQH (RBB)

**ORDER DISMISSING FIRST
 AMENDED PETITION WITHOUT
 PREJUDICE**

On September 14, 2007, Petitioner, a state prisoner proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis. On September 26, 2007, this Court granted Petitioner's application to proceed in forma pauperis, and dismissed the petition with leave to amend for Petitioner's failure to clearly and succinctly state his federal claims. [Doc. No. 3.] On October 26, 2007, Petitioner filed a First Amended Petition. [Doc. No. 4.]

FAILURE TO STATE GROUNDS FOR RELIEF IN PETITION

Rule 2(c) of the Rules Governing Section 2254 Cases states that the petition "shall set forth in summary form the facts supporting each of the grounds . . . specified [in the petition]." Rule 2(c), 28 U.S.C. foll. § 2254. *See also Boehme v. Maxwell*, 423 F.2d 1056, 1058 (9th Cir. 1970) (trial court's dismissal of federal habeas proceeding affirmed where petitioner made conclusory allegations instead of factual allegations showing that he was entitled to relief). Here, Petitioner has violated Rule 2(c). Although Petitioner does not fail to state generalized constitutional grounds for relief, he does fail to provide specific, intelligible factual allegations

1 in support of such grounds.

2 While courts should liberally interpret pro se pleadings with leniency and understanding,
3 this should not place on the reviewing court the entire onus of ferreting out grounds for relief.
4 *Cf. Burkey v. Deeds*, 824 F. Supp. 190, 193 (D. Nev. 1993) (finding that courts do not have
5 entire onus of creating federal claim for petitioner). This Court would have to engage in a
6 tenuous analysis in order to attempt to identify and make sense of the Petition. In order to satisfy
7 Rule 2(c), Petitioner must point to a “real possibility of constitutional error.” *Cf. Blackledge v.*
8 *Allison*, 431 U.S. 63, 75 n.7 (1977) (internal quotation marks omitted). Facts must be stated, in
9 the petition, with sufficient detail to enable the Court to determine, from the face of the petition,
10 whether further habeas corpus review is warranted. *Adams v. Armontrout*, 897 F.2d 332, 334
11 (8th Cir. 1990). Moreover, the allegations should be sufficiently specific to permit the
12 respondent to assert appropriate objections and defenses. *Harris v. Allen*, 739 F. Supp. 564, 565
13 (W.D. Okla. 1989). Here, the lack of coherent grounds for relief in the Petition prevents the
14 Respondent from being able to assert appropriate objections and defenses.

15 Due to Petitioner’s unsatisfactory showing, the Court dismisses the action without
16 prejudice. Should Petitioner decide to file another petition, he is advised to *clearly and*
17 *succinctly* state all grounds for relief using the Second Amended Petition form sent to Petitioner
18 with this Order.

19 **FAILURE TO ALLEGE EXHAUSTION OF STATE JUDICIAL REMEDIES**

20 Further, habeas petitioners who wish to challenge either their state court conviction or
21 the length of their confinement in state prison, must first exhaust state judicial remedies. 28
22 U.S.C. § 2254(b), (c); *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). To exhaust state
23 judicial remedies, a California state prisoner must present the California Supreme Court with a
24 fair opportunity to rule on the merits of every issue raised in his or her federal habeas petition.
25 28 U.S.C. § 2254(b), (c); *Granberry*, 481 U.S. at 133-34. Moreover, to properly exhaust state
26 court remedies a petitioner must allege, in state court, how one or more of his or her federal
27 rights have been violated. The Supreme Court in *Duncan v. Henry*, 513 U.S. 364 (1995)
28 reasoned: “If state courts are to be given the opportunity to correct alleged violations of
prisoners’ federal rights, they must surely be alerted to the fact that the prisoners are asserting

1 claims under the United States Constitution.” Id. at 365-66 (emphasis added). For example,
 2 “[i]f a habeas petitioner wishes to claim that an evidentiary ruling at a state court trial denied him
 3 [or her] the due process of law guaranteed by the Fourteenth Amendment, he [or she] must say
 4 so, not only in federal court, but in state court.” Id. at 366 (emphasis added).

5 Nowhere in the Petition does Petitioner allege that he raised his claims in the California
 6 Supreme Court. In fact, he specifically indicates he did not seek review in the California
 7 Supreme Court. (See Pet. at 6 - 9.) If Petitioner has raised his claims in the California Supreme
 8 Court he must so specify. “The burden of proving that a claim has been exhausted lies with the
 9 petitioner.” Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997); see Breard v. Pruett, 134 F.3d
 10 615, 619 (4th Cir. 1998); Lambert v. Blackwell, 134 F.3d 506, 513 (3d Cir. 1997); Oyler v.
 11 Allenbrand, 23 F.3d 292, 300 (10th Cir. 1994); Rust v. Zent, 17 F.3d 155, 160 (6th Cir. 1994).

12 Further, the Court cautions Petitioner that under the Antiterrorism and Effective Death
 13 Penalty Act of 1996 (AEDPA) a one-year period of limitation shall apply to a petition for a writ
 14 of habeas corpus by a person in custody pursuant to the judgment of a State court. The
 15 limitation period shall run from the latest of:

16 (A) the date on which the judgment became final by the
 17 conclusion of direct review or the expiration of the time for seeking
 such review;

18 (B) the date on which the impediment to filing an application
 19 created by State action in violation of the Constitution or laws of the
 United States is removed, if the applicant was prevented from filing
 20 by such State action;

21 (C) the date on which the constitutional right asserted was
 22 initially recognized by the Supreme Court, if the right has been
 newly recognized by the Supreme Court and made retroactively
 applicable to cases on collateral review; or

23 (D) the date on which the factual predicate of the claim or
 24 claims presented could have been discovered through the exercise
 of due diligence.

25 28 U.S.C.A. § 2244(d)(1)(A)-(D) (West Supp. 2002).

26 The statute of limitations does not run while a properly filed state habeas corpus petition
 27 is pending. 28 U.S.C. § 2244(d)(2); see Nino v. Galaza, 183 F.3d 1003, 1006 (9th Cir. 1999).
 28 But see Artuz v. Bennett, 531 U.S. 4, 8 (2000) (holding that “an application is ‘properly filed’
 when its delivery and acceptance [by the appropriate court officer for placement into the record]

1 are in compliance with the applicable laws and rules governing filings.”). However, absent some
2 other basis for tolling, the statute of limitations does run while a federal habeas petition is
3 pending. Duncan v. Walker, 533 U.S. 167, 181-82 (2001).

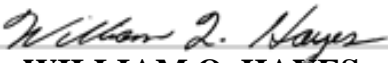
4 Rule 4 of the Rules Governing Section 2254 Cases provides for summary dismissal of a
5 habeas petition “[i]f it plainly appears from the face of the petition and any exhibits annexed to
6 it that the petitioner is not entitled to relief in the district court . . .” Rule 4, 28 U.S.C. foll.
7 § 2254. Here, it appears plain from the Petition that Petitioner is not presently entitled to federal
8 habeas relief because he has not alleged exhaustion of state court remedies.

9 **CONCLUSION**

10 Based on the foregoing, the Court **DISMISSES** the petition for (1) failure to state
11 cognizable claims for relief and (2) failure to allege exhaustion of state judicial remedies. In
12 order to have this case reopened, Petitioner must submit a First Amended Petition that cures the
13 deficiencies outlined above **no later than January 7, 2008. For Petitioner’s convenience, the**
14 ***Clerk of Court shall attach a blank First Amended Petition for to this Order.***

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16 **IT IS SO ORDERED.**

17 DATED: November 15, 2007

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19 **WILLIAM Q. HAYES**
20 United States District Judge
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